

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ARTURO RIVERA,	§	
Petitioner,	§	
	§	
v.	§	CIVIL ACTION NO: H-07-3562
	§	
NATHANIEL QUARTERMAN,	§	
Director of the Texas Department	§	
of Criminal Justice - Correctional	§	
Institutions Division,	§	
Respondent.	§	

MEMORANDUM AND RECOMMENDATION

Arturo Rivera's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 has been referred to this magistrate judge for a report and recommendation (Dkt. 4). The court recommends that Rivera's petition be denied with prejudice.

BACKGROUND

Rivera is currently in the custody of the Texas Department of Criminal Justice serving a 40-year sentence for burglary and aggravated sexual assault. Rivera is not eligible for release to mandatory supervision due to the nature of his offenses. It is not necessary to recite the procedural history of Rivera's appeal and state habeas proceedings because Rivera is challenging a disciplinary proceeding, not his conviction.

On August 8, 2006, Rivera was found guilty of possessing contraband, namely child pornography, a Level 2, Code 16.0 violation of the TDCJ-CID *Disciplinary Rules and Procedures for Offenders*. The hearing officer assessed punishment as (1) 30 days loss of recreation and commissary privileges; (2) reprimand; and (3) 15 days solitary confinement.

Rivera alleges that this proceeding rendered him ineligible to participate in the Gang Renouncement and Disassociation (“GRAD”) program for a minimum of one year. Rivera’s step one and step two grievances were denied. He filed this petition on July 23, 2007.

ANALYSIS

A prisoner is entitled to federal habeas relief only when he has been deprived of some right secured by the United States Constitution or federal law. *Teague v. Quarterman*, 482 F.3d 769, 773 (5th Cir. 2007). “The Due Process Clause does not protect every change in the conditions of confinement having a substantial adverse impact on the prisoner.” *Sandin v. Conner*, 515 U.S. 472, 478 (1995). However, prisoners do not lose all constitutional rights when they are incarcerated. *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974). While the Supreme Court explained in *Sandin* that states may under certain circumstances create rights that implicate Due Process, such rights are limited to freedom from restraints that impose “atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” 515 U.S. at 484.

A prisoner cannot state a claim for federal habeas relief based on disciplinary sanctions unless the sanctions imposed affect the fact or duration of the prisoner’s sentence. *Malchi v. Thaler*, 211 F.3d 953, 958 (5th Cir 2000). Rivera did not lose good time credits as a result of his disciplinary proceeding, but even if he had it would not give rise to a claim for federal habeas relief because he is not eligible for mandatory supervision. *Malchi*, 211 F.3d at 959; *Carson v. Johnson*, 112 F.3d 818, 821 (5th Cir. 1997); *Sandin*, 515 U.S. at 487.

To the extent Rivera intends to claim that his punishment will delay his release on parole, it is well settled that “[t]here is no right or constitutional expectancy of early release on parole in Texas, because parole is within the total and unfettered discretion of the State.” *Teague v. Quarterman*, 482 F.3d 769, 776 (5th Cir. 2007); *Madison v. Parker*, 104 F.3d 765, 768 (5th Cir. 1997).

The punishments Rivera did receive are not atypical of the hardships that commonly occur in prison life. *See Malchi*, 211 F.3d at 958 (“Clearly, . . . thirty day loss of commissary privileges and cell restriction do not implicate due process concerns”); *Madison*, 104 F.3d at 767 (loss of commissary and cell restriction); *Pickens v. Minton*, 109 Fed. Appx. 655, 656 (5th Cir. 2004) (placement in isolation for 20 days); *Sandin*, 515 U.S. at 485-86 (segregated confinement). Thus, Rivera has not raised a claim that implicates his due process rights.

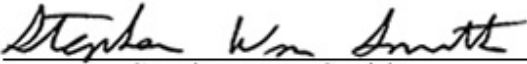
CONCLUSION

Rivera cannot state a claim for federal habeas relief based on alleged constitutional defects in his disciplinary proceedings. Therefore, the court recommends that Rivera’s petition be denied with prejudice.

The court further finds that Rivera has not made a substantial showing that he was denied a constitutional right or that it is debatable whether this court is correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Therefore, the court recommends that a certificate of appealability not issue.

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* Rule 8(b) of the Rules Governing Section 2254 Cases; 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72.

Signed at Houston, Texas on September 4, 2008.



Stephen Wm Smith
United States Magistrate Judge